

**Introduced by Senator Kelley**

January 27, 1997

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An act to amend Section 308 of the Penal Code, relating to crimes.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 198, as introduced, Kelley. Tobacco: minors: attempt to purchase.

Existing law makes it a crime for any person under the age of 18 years to purchase, receive, or possess tobacco, cigarettes, or smoking paraphernalia.

This bill, in addition, would make it a crime for any person under the age of 18 years to attempt to purchase these items. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 308 of the Penal Code is  
2 amended to read:



1 308. (a) Every person, firm or corporation which  
2 knowingly sells, gives, or in any way furnishes to another  
3 person who is under the age of 18 years any tobacco,  
4 cigarette, or cigarette papers, or any other preparation of  
5 tobacco, or any other instrument or paraphernalia that is  
6 designed for the smoking or ingestion of tobacco,  
7 products prepared from tobacco, or any controlled  
8 substance, is subject to either a criminal action for a  
9 misdemeanor or to a civil action brought by a city  
10 attorney, a county counsel, or a district attorney,  
11 punishable by a fine of two hundred dollars (\$200) for the  
12 first offense, five hundred dollars (\$500) for the second  
13 offense, and one thousand dollars (\$1,000) for the third  
14 offense.

15 Notwithstanding Section 1464 or any other provision of  
16 law, 25 percent of each civil and criminal penalty  
17 collected pursuant to this subdivision shall be paid to the  
18 office of the city attorney, county counsel, or district  
19 attorney, whoever is responsible for bringing the  
20 successful action, and 25 percent of each civil and  
21 criminal penalty collected pursuant to this subdivision  
22 shall be paid to the city or county for the administration  
23 and cost of the community service work component  
24 provided in subdivision (b).

25 Proof that a defendant, or his or her employee or agent,  
26 demanded, was shown, and reasonably relied upon  
27 evidence of majority shall be defense to any action  
28 brought pursuant to this subdivision. Evidence of  
29 majority of a person is a facsimile of or a reasonable  
30 likeness of a document issued by a federal, state, county,  
31 or municipal government, or subdivision or agency  
32 thereof, including, but not limited to, a motor vehicle  
33 operator's license, a registration certificate issued under  
34 the Federal Selective Service Act, or an identification  
35 card issued to a member of the armed forces.

36 For purposes of this section, the person liable for selling  
37 or furnishing tobacco products to minors by a tobacco  
38 vending machine shall be the person authorizing the  
39 installation or placement of the tobacco vending machine  
40 upon premises he or she manages or otherwise controls

1 and under circumstances in which he or she has  
2 knowledge, or should otherwise have grounds for  
3 knowledge, that the tobacco vending machine will be  
4 utilized by minors.

5 (b) Every person under the age of 18 years who  
6 purchases, *attempts to purchase*, receives, or possesses  
7 any tobacco, cigarette, or cigarette papers, or any other  
8 preparation of tobacco, or any other instrument or  
9 paraphernalia that is designed for the smoking of tobacco,  
10 products prepared from tobacco, or any controlled  
11 substance shall, upon conviction, be punished by a fine of  
12 seventy-five dollars (\$75) or 30 hours of community  
13 service work.

14 (c) Every person, firm or corporation which sells, or  
15 deals in tobacco or any preparation thereof, shall post  
16 conspicuously and keep so posted in his, her, or their place  
17 of business a copy of this act, and any such person failing  
18 to do so shall upon conviction be punished by a fine of ten  
19 dollars (\$10) for the first offense and fifty dollars (\$50) for  
20 each succeeding violation of this provision, or by  
21 imprisonment for not more than 30 days.

22 The Secretary of State is hereby authorized to have  
23 printed sufficient copies of this act to enable him or her  
24 to furnish dealers in tobacco with copies thereof upon  
25 their request for the same.

26 (d) For purposes of determining the liability of  
27 persons, firms, or corporations controlling franchises or  
28 business operations in multiple locations for the second  
29 and subsequent violations of this section, each individual  
30 franchise or business location shall be deemed a separate  
31 entity.

32 (e) It is the Legislature's intent to regulate the subject  
33 matter of this section. As a result, no city, county, or city  
34 and county shall adopt any ordinance or regulation  
35 inconsistent with this section.

36 (f) Notwithstanding any other provision of this  
37 section, the Director of Corrections may sell or supply  
38 tobacco and tobacco products, including cigarettes and  
39 cigarette papers, to any person confined in any institution  
40 or facility under his, her, or its jurisdiction who has

1 attained the age of 16 years, if the parent or guardian of  
2 the person consents thereto, and may permit smoking by  
3 any such person in any such institution or facility. No  
4 officer or employee of the Department of Corrections  
5 shall be considered to have violated this section by any act  
6 authorized by this subdivision.

7 SEC. 2. No reimbursement is required by this act  
8 pursuant to Section 6 of Article XIII B of the California  
9 Constitution because the only costs that may be incurred  
10 by a local agency or school district will be incurred  
11 because this act creates a new crime or infraction,  
12 eliminates a crime or infraction, or changes the penalty  
13 for a crime or infraction, within the meaning of Section  
14 17556 of the Government Code, or changes the definition  
15 of a crime within the meaning of Section 6 of Article  
16 XIII B of the California Constitution.

17 Notwithstanding Section 17580 of the Government  
18 Code, unless otherwise specified, the provisions of this act  
19 shall become operative on the same date that the act  
20 takes effect pursuant to the California Constitution.

